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INTERSTATE COMMERCE COMMISSION

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AGREEMENT AND ASSIGNMENT

Dated as of February 1, 1979

between

SHENANDOAH-VIRGINIA CORPORATION,  
Builder

and

LASALLE NATIONAL BANK, as Agent.  
Assignee

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Filed and recorded with the Interstate Commerce  
Commission pursuant to Section 20c of the Interstate  
Commerce Act on February \_\_, 1979, at \_\_\_\_\_,  
recordation number \_\_\_\_\_.

AGREEMENT AND ASSIGNMENT dated as of February 1, 1979, between SHENANDOAH-VIRGINIA CORPORATION (hereinafter called the Builder) and LASALLE NATIONAL BANK, acting as Agent (hereinafter, together with its successors and assigns, called the Assignee) under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement),

W I T N E S S E T H:

WHEREAS, the Builder and Exchange National Bank of Chicago, acting as Trustee (hereinafter called the Owner-Trustee) under that certain Trust Agreement dated as of January 1, 1979, as amended by that certain Trust Amendment Agreement No. 1 dated as of February 1, 1979 (said Trust Agreement, as so amended, hereinafter called the Trust Agreement) with Citizens Fidelity Bank and Trust Company and Suburban Trust Company (hereinafter individually called an Owner and collectively the Owners), have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the CSA) covering the construction, sale and delivery by the Builder and the purchase by the Owner-Trustee of the railroad equipment described in Annex B to the CSA (said equipment being hereinafter called the Equipment); and

WHEREAS, the Owner-Trustee and Island Creek Coal Company (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: that in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee:

- (a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as delivered to and accepted by the Owner-Trustee, subject to payment to the Builder of the amount

required to be paid pursuant to Section 4 hereof and of the amounts due from the Owner-Trustee to the Builder under the CSA;

(b) all the right, title and interest of the Builder in and to the CSA (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of § 4.3 thereof and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Owner-Trustee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this Section 1, all the Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Owner-Trustee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA, provided, however, that this Assignment shall not subject the Assignee to, or transfer or in any way affect the obligations of the Builder to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 14 of the CSA or relieve the Owner-Trustee from its obligations to such Builder contained in Articles 2, 3, 4, 6 and 14 of the CSA, it being agreed that all obligations of the Builder to the Owner-Trustee with respect to the Equipment shall be and remain enforceable by the Owner-Trustee, against and only against the Builder. The Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Owner-Trustee with the terms and agreements on its part to be performed under the CSA, but at the expense and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it will construct the Equipment in the shops of Norfolk and Western Railway Company in Roanoke, Virginia in full accordance with the CSA and will deliver the same upon completion to the Owner-Trustee in accordance with the provisions thereof; and that it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Owner-Trustee that at the time of delivery of each unit of its Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner-Trustee under the CSA and the rights of the Lessee under the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Owner-Trustee thereunder. The Builder will not deliver any units of the Equipment to the Owner-Trustee under the CSA until the CSA, the Lease, this Assignment, the Lease Assignment and the Guaranty (as defined in the Participation Agreement) have been filed in accordance with Section 20c of the Interstate Commerce Act (the Builder being entitled to rely on advice from special counsel for the Assignee that such filing has occurred).

SECTION 3. The Builder agrees that in any proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Owner-Trustee or the Lessee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner-Trustee or the Lessee by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense,

setoff, counterclaim or recoupment asserted by the Owner-Trustee or the Lessee in any such proceeding or action and (b) if the court or other body having jurisdiction in such proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Owner-Trustee or the Lessee with respect to its Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon such Equipment.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA, shall pay to the Builder an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice therefor then being settled for, which, under the terms of subparagraph (b) of § 4.3 thereof, is payable in installments, provided that the conditions specified in Paragraphs 8 and 9 of the Participation Agreement have been satisfied and there shall have been delivered to the Assignee (with a copy to the Owner-Trustee) on or prior to

such Closing Date, the following documents, in form and substance satisfactory to it and to Thelen, Marrin, Johnson & Bridges, special counsel to the Assignee, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from the Builder to the Assignee transferring to the Assignee the security interest of the Builder in such units, warranting to the Assignee and to the Owner-Trustee that, at the time of delivery and acceptance of such units under the CSA, the Builder had legal title to, and good and lawful right to sell, such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Owner-Trustee under the CSA and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to such units as contemplated by Article 3 of the CSA and Article 2 of the Lease;

(c) an invoice of the Builder for such units and a certification by the Owner-Trustee and the Lessee as to their approval thereof;

(d) an opinion of counsel for the Builder, dated as of the Closing Date, addressed to the Assignee and the Owner-Trustee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in the Assignee the security interest of the Builder in such units, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and the rights of the Lessee under the Lease) arising from, through or under the Builder; and

(e) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such

payment is made by the Assignee with funds furnished to it for that purpose by the Owner-Trustee.

The obligation of the Assignee hereunder to make payment for any unit of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Owner-Trustee of the amount required to be paid by it pursuant to subparagraph (a) of § 4.3 of the CSA. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Owner-Trustee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee and the Owner-Trustee that this Assignment and the CSA were duly authorized, executed and delivered by it, that, assuming due authorization, execution and delivery by the Assignee and the Owner-Trustee, this Assignment and the CSA are, insofar as the Builder is concerned, legal, valid and existing agreements binding upon the Builder in accordance with their terms and that they are now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights,

titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Kentucky; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing or depositing of the CSA and this Assignment as shall be conferred by the laws of any jurisdiction in which the same shall be filed or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart marked Original Counterpart delivered to the Assignee shall be deemed to be the original counterpart and the other counterparts shall be deemed to be duplicates thereof. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by each party hereto is as stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective



corporate seals to be hereunto affixed and duly attested,  
all as of the date first above written.

SHENANDOAH-VIRGINIA  
CORPORATION, Builder

By J. T. Valles  
Title: President

[Corporate Seal]

Attest:

*Joseph Pakush*  
SECRETARY  
JOSEPH PAKUSH

LASALLE NATIONAL BANK, as Agent  
Assignee

By \_\_\_\_\_  
Title: Vice President

[Seal]

Attest:

## ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of February 1, 1979.

EXCHANGE NATIONAL BANK OF  
CHICAGO, not in its individual  
capacity but solely in its  
capacity as Owner-Trustee

By \_\_\_\_\_  
Title: Vice President

[Seal]

Attest:

STATE OF VIRGINIA )  
 City )  
 COUNTY OF Roanoke ) ss.:

On this 15th day of February, 1979, before me personally appeared J. T. Vallroy, to me personally known, who being by me duly sworn, says that he is a President of SHENANDOAH-VIRGINIA CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Judy A. McLaney  
 Notary Public  
 My Commission Expires March 14, 1981

[Notarial Seal]

My Commission expires:

STATE OF ILLINOIS )  
 ) ss.:  
 COUNTY OF COOK )

On this \_\_\_\_ day of February, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is a \_\_\_\_\_ of LASALLE NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

\_\_\_\_\_  
 Notary Public

[Notarial Seal]

My Commission expires: